

MARYLAND

HC

107

.M32


no. 80-7

Folio

UNIV. OF MD. COLLEGE PARK



3 1430 00301707 8



Digitized by the Internet Archive
in 2010 with funding from
Lyrasis Members and Sloan Foundation

<http://www.archive.org/details/foreigninvestmen807mary>



HARRY HUGHES
GOVERNOR

Maryland
HC
107
.M32
no. 80-7
Folio

MARYLAND
DEPARTMENT OF STATE PLANNING

301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201

CONSTANCE LIEDER
SECRETARY

January 28, 1980

The Honorable James Clark, Jr.
President
The Senate
Annapolis, Maryland 21401

The Honorable Benjamin L. Cardin
Speaker
The House of Delegates
Annapolis, Maryland 21401

Re: Foreign Investment in
Maryland Farmland

Dear Gentlemen:

The 1978 General Assembly passed HJR 72, which requested that the Department of State Planning, the Department of Assessments and Taxation, and the Department of Agriculture report to the 1979 General Assembly on the extent of foreign purchases of Maryland farmland and the impact of those purchases on land and food prices.

Unfortunately, the required report was not completed until after the adjournment of the 1979 Session. Furthermore, there are serious problems in assembling such data and in analyzing it. Therefore, the study which was done has severe limitations.

It is difficult to identify with certainty the true owners of land. It is very possible to disguise ownership through corporations, straw partners, unrecorded agreements, dummy sales, etc. Therefore, probably not all foreign purchasers were actually identified.

In addition, even if the foreign purchasers were identified, we do not know how much farm land in total changed hands. The U.S. Department of Agriculture estimates that only 2% to 3% of U.S. farmland changes hands in any given year. If this is true in Maryland, then 52,000 to 78,000 acres change hands annually. If the federal figures are correct, and foreign sales in Maryland were 6,000 acres per year, then about 8%-12% of yearly sales may be to foreign buyers. If the State survey is correct, the percentage would be 4%-6% of annual sales.

Nevertheless, given the limitations of the study, we hereby transmit it for your consideration. The major findings are summarized below.

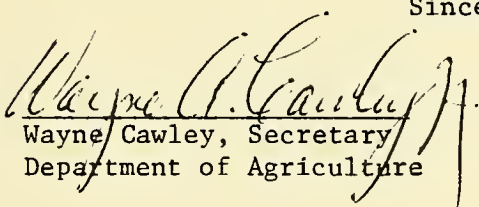
Known transactions involving Maryland farmland and foreign interests show that: (1) Foreign interests through 37 individual transactions are known to have purchased 10,820 acres of Maryland farmland during the period December, 1975 and February, 1979. (2) Most of the known transactions have occurred on the Eastern Shore (i.e. 8439 acres). (3) The known transactions involving foreign investors amount to less than 1/5 of one percent of Maryland's land and less than 1/4 of one percent of Maryland's prime agricultural soils in 3 1/4 years. (4) No single foreign owner or nationality predominates in the purchase of Maryland farmland. (5) The foreign investor has, on the average, paid a higher unit cost for farmland though this average is biased by the investor's emphasis on high quality farmland, recent accelerations in land value, and the purchase of waterfront property.

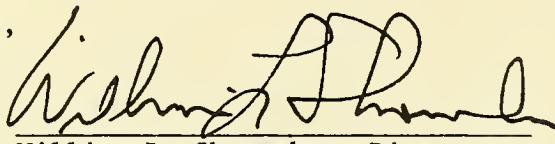
Information on the sale of Maryland agricultural land to foreign interests is elusive. Until recently, there were no requirements that foreign investors report the purchase of real estate. Lacking such an inventory, the data used in this study were difficult to compile and are incomplete. The comprehensiveness of this study suffers to an unknown degree because of this. The enactment and implementation of the Agricultural Foreign Investment Disclosure Act of 1978 by the U.S. Congress will soon remedy this situation. Effective February 2, 1979, a uniform and continuous reporting mechanism was established by the U.S. Department of Agriculture and this information will, by Federal law, be shared with the States.


It is our recommendation that the State continue to monitor the investment activity of foreign interests in Maryland farmland. We have agreed to perform this function and to report to you from time to time our findings. The Maryland Department of Agriculture will serve as liaison with the U.S. Department of Agriculture and the federal reporting system, the Department of Assessment and Taxation will continue to provide support in the collection and verification of transaction information, and the Department of State Planning will assist the Department of Agriculture in analyzing the information.

We trust this will be satisfactory. Should you wish to discuss the contents of this report and our recommendations, we are most willing.

Sincerely,


Wayne Cawley, Secretary
Department of Agriculture


William L. Shoemaker, Director
Department of Assessments and
Taxation


Constance Lieder, Secretary
Department of State Planning

FOREIGN INVESTMENT IN MARYLAND FARMLAND

**A REPORT TO THE
MARYLAND GENERAL ASSEMBLY**

Maryland. State Planning Dept

Publication.

January, 1980
Prepared by the Maryland
Departments of Agriculture,
Assessments and Taxation,
and State Planning
pursuant to HJR 72
of 1978

Planning

Marginal

HC 6

107

,M32

ms. 80-4

Felis

CONTENTS

INTRODUCTION	1
SECTION I	
A NATIONAL PERSPECTIVE ON THE ISSUE.	2
SECTION II	
FOREIGN PURCHASE OF MARYLAND FARMLAND.	9
SECTION III - APPENDICES	
A - House Joint Resolution 72.	15
B - Agricultural Foreign Investment Disclosure Act of 1978 - Public Law 95-460.	16
C - Analysis of Public Law 95-460.	20
D - Federal Regulations - Disclosure of Foreign Investment in Agricultural Land.	23

INTRODUCTION

Within the last two years, the purchase of American farmland by foreigners has been discussed as a national issue. The magnitude of the investment, the identification of the investors, and the causes and perceived implications have precipitated a great deal of concern. Much of the debate has been fueled by the lack of data.

Concerned by potential implications to Maryland's agricultural resources and economy of foreign farmland investment, the Maryland General Assembly requested, through the 1978 House Joint Resolution 72, that the Department of State Planning, the Department of Assessments and Taxation, and the Maryland Department of Agriculture study and report on the extent of purchases of Maryland farmland by foreign firms and individuals and the effect of these purchases on agricultural land and food stuff prices.

This report has been prepared pursuant to that directive. It summarizes the national trends, the causes of accelerated foreign real estate investment, and the perceived implications of that investment. In addition, recent purchases of Maryland farmland are inventoried and the economic and resource values are discussed.

SECTION I

A NATIONAL PERSPECTIVE ON THE ISSUE

The investment of foreign capital in the U. S. is not a recent event. Historically, the flow of European financial resources has been a component of the U. S. financial picture. Participation of English and French and other Western European investors was a significant factor in the early development of the U. S., e.g. railroads and steel. Thus, while foreign investment in agricultural land may be perceived as a recent phenomenon, this country and State have a long history of foreign participation in other sections of our economy.

Though the foreign investment community has enlarged and broadened in diversity in recent years, the percentage of foreign investments to U. S. capital is fractional. It has been estimated that less than 0.5% of U. S. farmland is owned by foreign interests.¹

There are three facets to the farmland investment issue. First, on a national basis there is no adequate accounting or inventory of foreign investments in U. S. farmland. Second, in the absence of an accurate inventory, rumor and misrepresentation are the principal sources of information. And third, though foreign interest in farmland is increasing, as are foreign purchases, their holdings to date are not substantial.

Why is the foreign interest in U. S. farmland increasing, what are the ramifications of its sale to foreign corporations and individuals, and why is rumor rather than fact the keystone in our knowledge of land transactions involving foreigners and U. S. farmland? The following discussion addresses these questions and establishes a context in which to consider similar investment activities in Maryland.

The Reasons

Speculation in land is a natural investment pattern because of its low risk. Because of its diverse potential, speculation on prime farmland is intensive.

There are related motivations that induce foreign purchase of agricultural land.



. Increased value of farmland. Regardless of the use to which newly purchased farmland is put, the increased value (overtime) of the property is all but assured. Nationally, agricultural property values have increased substantially in recent years. The national average per acre price has increased from \$200 in March, 1971 to approximately \$450 as of February, 1977, yielding an annual rate of return in excess of 20%.² The annual compounded growth rate of Maryland Agricultural Land prices for the same period was 13.2%. Though below the national average in rate for that period, farm real estate values in Maryland ranked fifth in the Nation at \$1371 per acre.³ More recently, in the period February, 1977 to February, 1978, the rate of increase for Maryland land rose to 16%; the third highest in the country. Figure 1 shows the percent change in average value of farmland by geographic region for those time periods.

Speculation related to expected valuation increases due to public improvements is common and the profits extra-ordinarily high. A study⁴ by A. Alan Schmid for Resources for the Future showed that undeveloped land suitable for residential building sold for an average of 1800% more than the lands' value as farmland.

Purchase of farmland as a hedge against inflation is also applicable to tracts averaging less spectacular gains. In this instance, the increased value of land (even at rates below 8%) in combination with leveraged financing and a modest operating income from the working farm can provide an attractive overall return for the investor.

. Cost of land for agricultural pursuits. Even if one discounts the potential (and inevitable) appreciation of land values and

² Roulac, Stephen. Agriculture Land Investment: Profit Opportunity or New Speculative Bubble, The Appraisal Journal, January, 1978.

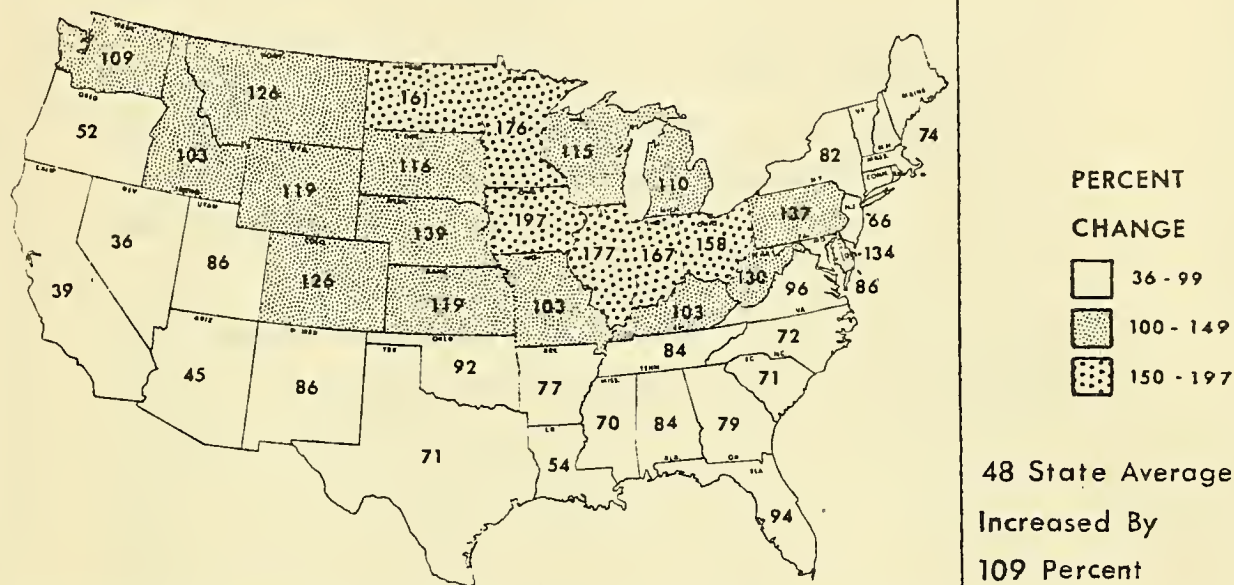
³ Questor Associates and U. S. Department of Agriculture.

⁴ Schmid, A. Alan, Converting Land from Rural to Urban Uses, Johns Hopkins University Press, 1968.

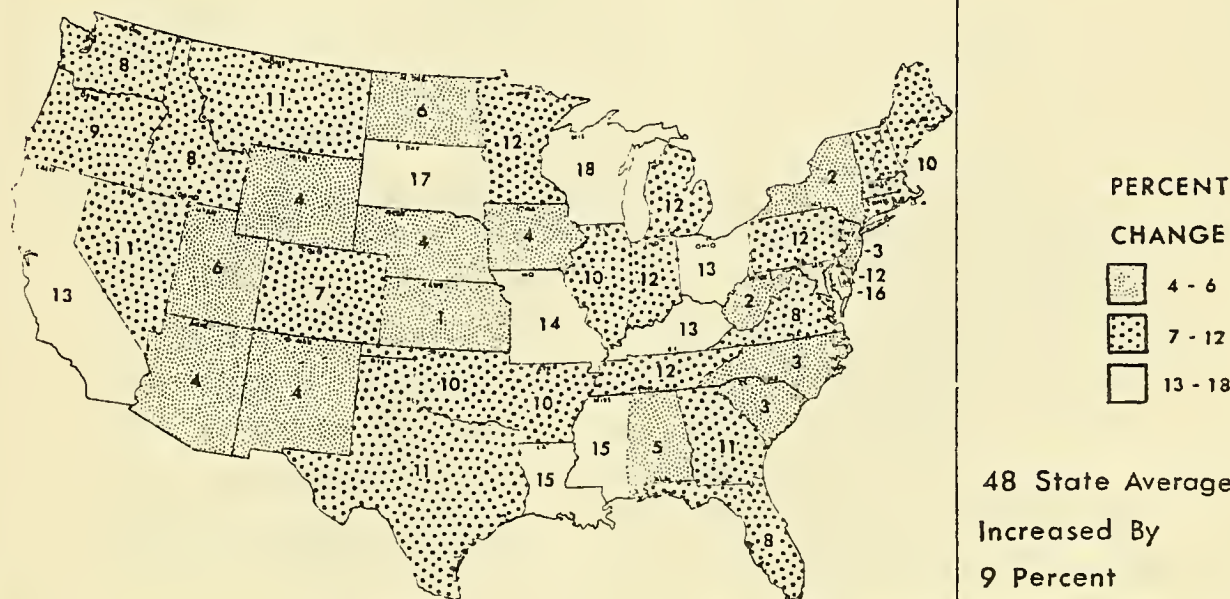
PERCENT CHANGE IN AVERAGE VALUE OF FARM REAL ESTATE PER ACRE

FIGURE 1

MARCH 1972 - FEBRUARY 1977



FEBRUARY 1977 FEBRUARY 1978



concentrates on the return on agricultural pursuits, U. S. farmland is a bargain compared to the price and availability of prime agricultural land in Europe and the Orient.

- . Tax advantages. There are two facets to this motive. First, the U. S. provides certain tax advantages to foreign investors to encourage trade. Second, tax increases and rent controls in foreign lands are frequently more severe, particularly in Europe, and the U. S. provides a favorable environment for investment, or reinvestment, of funds of foreign individuals and corporations.

One notable provision in the U. S. tax code provides that foreign based single asset holding companies are not subject to capital gains taxation upon resale of real estate at a profit. Ironically, some of the "foreign" purchases of U. S. farmland are ultimately transacted by U. S. citizens. The formation of foreign corporations by U. S. individuals for tax advantage purposes is not uncommon. This provision alone provides both an incentive for foreign corporations based in territories with favorable U. S. tax arrangements and at the same time enables foreign investors to pay more for the land because of the potential greater resale profit.

- . Fluctuation of U. S. Currency. The decline of the U. S. dollar in relation to certain foreign currencies, notably German marks and Japanese yen, creates an opportunity to buy U. S. farmland with "cheap dollars."
- . Economic and social system changes. Political and social unrest in a number of nations, and its implications on internal economic stability, prompts foreigners to seek out more stable financial environments. Taxing policies, repatriations, increasing socialism, and government ownership seem to contribute to the desire of foreign business - and many of only modest size - to invest legally and through sub-rosa transactions in U. S. land.
- . Future residency and safety. A direct implication of the social unrest in foreign countries is the increasing tendency of foreigners to immigrate to the U. S. having, in advance, shifted their assets to U. S. land and enterprises.

The Impacts

What are the implications of this investment pattern? There has been much discussion on this topic, but the effects to date have been localized where they've been observed at all.

Testimony before a House Subcommittee⁵ raised the following points:

- . Land prices. Foreign investors can afford to spend more than their U. S. counterparts (because of tax advantages and currency valuations). This allows them to pay higher prices for land and "bid up" adjacent land values. The ramifications can include encouraging disinvestment in farms by U. S. farmers awaiting sales with exceptional profits, or to the converse, making it impossible for any but the largest agricultural corporations to purchase land for expansion purposes. Congressman Jeffords likens this to a rural equivalent of red-lining with the demise of the family farm as the perceived outcome.
- . Balance of payments. Some experts see the investment pattern as a good one. They argue that foreign buyers use U. S. services, buy U. S. supplies, deal with U. S. lending institutions and help reduce the nation's balance of payments deficit by bringing back U. S. dollars. Mason Gaffney argues in the July, 1977 Natural Resources Journal that benefit from land purchases with foreign monies may lead to long-term drains following capitalization of the investment. This is particularly true if public monies via infrastructure, services, appreciate the value and the capital gains are liquidated and removed from the U. S. economy.
- . Reduced productivity. The decisions related to the use of the holding, its profitability, and maintenance are said to be effected by absentee ownership and these decisions can, in turn, impact the locality.
- . Exporting crops. Concern has been raised about the exportation of goods grown on the land diminishing food and fiber available

⁵ Subcommittee on Family Farms, Rural Development, and Special Studies of the Committee on Agriculture, House of Representatives Impact of Foreign Investment in Farmland, Hearings June 20, July 19, 28, 1978.

within the U. S. marketplace. U. S. Agriculture officials, in turn, are quick to point out that 1/3 or more of the U. S. agricultural production is currently, and purposely, exported to the direct benefit of the U. S. farmer.

- . Legal equity. Questions remain unanswered as to how far can the states or federal government go in the regulation of foreign investments while operating under existing naturalization laws and constitutional implications.
- . Diplomatic relations. Though many countries currently restrict foreign land investment within their territories, a dramatic shift in current U. S. policies may precipitate counter actions abroad involving U. S. interests.

Availability of Information

At the request of Senator Herman Talmadge, the General Accounting Office initiated a study to determine the magnitude of foreign investment activity in U. S. farmland. The Comptroller General, in the GAO report verifies earlier inference in this review: "...very little aggregate data exists about the ownership of U. S. real estate; there is no national system for obtaining such information; and although some federal studies have been made and other efforts are underway, the data produced to date is very fragmentary and inconclusive."

The basic problem of identifying the alien or corporate owner is made difficult by the tendency of these foreign investors to acquire land through brokers, trustees or through corporate entities or partnerships which do not reveal the ownership. The Federal government has not required the registration of foreign investors as it has done with resident aliens. This condition was remedied with the enactment of Public Law 95-460 on October 14, 1978. The Act is known as the Agricultural Foreign Investment Disclosure Act of 1978 and is described and analyzed in Appendices B and C. Briefly, the law requires that the purchase and sale of all U. S. farmland by foreign individuals and corporations be reported to the U. S. Department of Agriculture - Agricultural Stabilization and Conservation Service (ASCS) within 90 days of the transactions. All entities, either directly or indirectly, involving one or more foreign persons with five or more percent interest must file the report. The reports must contain the size and legal description of the area, its location, the purchase price and by whom

it was acquired, the proposed agricultural use of the land, and the names, addresses and citizenship of each individual holding five or more percent interest in the land. The U. S. Secretary of Agriculture will produce, semi-annually, summaries of the reports filed with the USDA-ASCS and make all information available to the States.

In general, the States have not collected much information on the foreign ownership of farmland. Only two States, Iowa and Minnesota, require non-resident aliens to file reports, annually, on their agricultural landholdings. These two States and Nebraska also require all corporations holding agricultural land to file annual reports identifying alien shareholders. This is also the case for aliens residing in certain counties of Vermont.

The Senate Committee on Agriculture, Nutrition and Forestry, chaired by Senator Talmadge of Georgia reported that about 800,000 acres of U. S. farmland were bought by foreign investors between January 1, 1977 and June 30, 1978. This amounted to 2 $\frac{1}{4}$ % of all farmland sales during that period and .08% of total U. S. agricultural land. The five States with the most acreage purchased by foreigners were Oregon, 129,700; Texas, 93,200; Georgia, 57,900; Louisiana, 54,300; and Arkansas, 42,900. Transactions were most frequent in the South and Southeast. The annual transfer rate to foreign ownership was approximately 530,000 acres. At this rate, it would take almost 20 years for foreign corporations to acquire ownership of an additional 1 percent of U. S. farmland. Total U. S. farmland is estimated at 1.05 billion acres.

The following section details the known level of investment of foreign interests in Maryland recently and provides additional detail on the use and productivity of the land involved in those transactions.

SECTION II

FOREIGN PURCHASE OF MARYLAND FARMLAND

Information on the sale of agricultural land to foreign interests is difficult to obtain. The sketchy information available to the 1978 Maryland General Assembly prompted the Legislature to request the Maryland Departments of Agriculture, Assessments and Taxation, and State Planning to undertake this study. Coincident with that request, Senator Talmadge, Chairman of the U.S. Senate Committee on Agricultural Nutrition and Forestry requested the U.S. Department of Agriculture to assess the magnitude and impact of foreign investment in U.S. farmland. The initiation of the State study was purposefully delayed by mutual agreement of the three State agencies so as to use information gathered for the U.S. Senate report and to reduce the potential for duplication of effort. The Senate report was released in January 1979 and reported that in Maryland, 8,898 acres were transferred to foreign interests between January 1977 and June 30, 1978. Aided by preliminary data compiled by the U.S.D.A. Agricultural Stabilization and Conservation Service, the State agencies began the process of verifying the federal data and further analyzing the magnitude of the transactions relative to the size and distribution of Maryland's agricultural industry.

The identification of all transactions involving foreign corporations or individuals cannot be accomplished because such transactions may easily disguise the true participants in a sale. For this reason, the information concerning such transactions in Maryland is incomplete and the analysis which follows is accordingly limited.

A State survey covered $3\frac{1}{2}$ years from December 1975-February 1979. To gather available information each county tax assessment supervisor of the Department of Assessments and Taxation was interviewed on several occasions and requested to identify "known" transactions of farmland to or between foreign interests. The results of the State survey identified approximately 10,820 acres that were acquired by foreign interests between December 1975 and February 1979. The federal data shows a faster rate of acquisition of almost 6,000 acres per year during 1977 and 1978. The State study of $3\frac{1}{2}$ years of transactions showed 3,000 acres per year. Figure 2 summarizes the transactions by county as identified by the State survey and Figure 3 illustrates the rate of acquisition.

Figure 2*

SUMMARY

FOREIGN INVESTMENTS IN MARYLAND FARMLAND,DECEMBER 1975-FEBRUARY 1979

<u>Location</u>	<u>Number of Transactions</u>	<u>Total Acreage</u>
Caroline	1	523
Carroll**	1	1,785
Cecil	3	740
Charles	1	596
Kent	6	1,661
Talbot	1	53
Queen Anne's	24	5,462
State	37	10,820

Figure 3

MARYLAND FARM SALES TO FOREIGN BUYERSPACE OF KNOWN TRANSACTIONS (in acres)

	<u>Total Sales</u>	<u>Average per calendar quarter</u>
December 1975	277	NA
January-December 1976	741	185
January-December 1977	3,167	792
January-December 1978	4,984	1,246
January-February 1979	1,654	NA

Thirty-seven transactions involving foreign buyers were identified. A single transaction that involved several parcels of land has been treated as a single event for this study. Twenty different individuals and corporations were involved in these transactions. Excluding the Lehigh cement ownership transfer, three corporations have acquired four or more farms and account for 3,132 acres or 34.6% of the farmland purchased by foreign interests.

* all acreages are approximate and based on tax map figures. Several individual transactions may have involved more than one parcel.

** figures for Carroll County reflect a change of ownership of 16 parcels from the Lehigh Portland Cement Company to a German firm for quarry and mining purposes.

The 1974 Census of Agriculture indicates that the total land in farms in Maryland for 1974 was 2,634,000 acres. Using this as a base, foreign purchases during the 3½ year study period of agricultural land account for .41% of Maryland's active farmland.

Each parcel included in a transaction involving a foreign buyer was located on tax maps by the Department of Assessments and Taxation. Staff of the Department of State Planning evaluated soils and land cover information for each of these parcels and tabulated statistics on the extent and distribution of prime and productive agricultural soils within each parcel. Figure 4 summarizes that information.

Figure 4
PRODUCTIVITY AND LAND USE OF PARCELS PURCHASES
BY FOREIGN INDIVIDUALS AND CORPORATIONS

	Acreage Purchased	Acreage* Prime and Productive Soils Purchased	Prime and Productive Soils as a % of Sales	Prime and Productive Soils as a % within Jurisdiction	% of** Total Sales in Cropland	% of Total Sales in Forest
Caroline	523	478	91.4%	.25%	81%	19%
Carroll	1,785***	***	***	***		
Cecil	740	639	86.4%	.32%	88.4%	11.6%
Charles	596	477	80.0%	.22%	100.0%	--
Kent	1,661	1,555	93.6%	.95%	81.6%	18.4%
Talbot	53	53	100.0%	.03%	100.0%	--
Queen Anne's	5,462	5,259	96.3%	3.24%	96.3%	3.7%
State	9,035	8,461	93.6%	.22%	91.2%	8.8%

An interpretation and tabulation of the prime and productive agricultural soils for each county and the State was accomplished by the Department of State Planning using the Maryland Automated Geographic Information System. As of

* Prime and Productive as defined in Natural Soil Groups of Maryland, DSP Publication No. 199.

** Includes farm homesite (1 5 acre) where present.

*** Excluded from computation - most parcels have been disturbed by mineral extraction or were not rated as prime or productive agricultural soils.

1974, there were 3.6 million acres of prime and productive soils in forestry, agricultural, and open space uses. Of this sum, 2.6 million acres were currently in agricultural uses. Foreign investors identified during the study period purchases .24% of Maryland's prime and productive agricultural land and .4% of those currently in use.

Information provided by county tax supervisors on 28* of the 37 transactions was used to calculate the average price per acre paid for farmland. The average price for all farmland transactions in Maryland between January 1, 1977 and June 30, 1978 was \$1270 per acre.** Through the 3½ year period investigated, the average price per acre paid by foreign investors was \$1605. Figure 5 provides additional detail for the period.

Figure 5
FOREIGN PURCHASES IN MARYLAND
AVERAGE PRICE PER ACRE*** (EXCLUDING IMPROVEMENTS)

	1975	1976		1977	
	DEC	JAN-JUNE	JULY-DEC	JAN-JUNE	JULY-DEC
No. of Transactions	1	1	2	4	5
Average price per acre	\$967	\$1196	\$1108	\$1432	\$1350

	1978		1979
	JAN-JUNE	JULY-DEC	JAN-FEB
No. of Transactions	3	6	6
Average price per acre	\$1423	\$1552	\$2452

The difference between the two averages may be created by several factors. First, land purchased by foreign interest is generally of a high quality, e.g., consider the data of Figure 4 and the State acreage includes all farmland sold. Second, several of the tracts purchased by foreign interests were waterfront parcels costing in excess of \$3000 per acre. Third, the price of land itself

* In some instances, information was not available for separating the value of improvements and the value of the land.

** Calculated from USDA-ACSC data for Maryland.

*** Based on 28 of 37 transactions identified.



increased substantially in Maryland, particularly in the last 12-15 months. And fourth, the foreign buyer is able to offer a higher price on the land for the reasons described in Section 1.

In summary, the analysis of the purchases of Maryland's farmland has shown that:

- (1) No single foreign owner or nationality predominates in the purchase of Maryland farmland and despite rumors, the land is not being purchased with "Middle East" monies but by German, French, Dutch and South American nationals for the most part.
- (2) Most of the known transactions have occurred on the Eastern Shore and principally in Queen Anne's County, and secondly, in Kent, both Counties having excellent access to Baltimore, Washington, Annapolis, Philadelphia and New York and endowed with excellent agricultural land, and a viable agricultural industry.
- (3) The known transactions involving foreign interest amount to less than 1/5 of one percent of Maryland's land and less about 1/4 of one percent of Maryland's prime agricultural soils. Should the unidentified transactions be as much as three or four times more numerous than those identified, than the total ownership acquired during the 3½ year study period would be 1% of the State.
- (4) Study statistics show that the foreign owner paid a higher unit cost for land in Maryland relative to all transactions though several factors may explain the difference.
- (5) Given the number of owners and nationalities involved in the limited foreign interest in Maryland, it is unlikely that they can presently alter Maryland's agricultural economy by diverting goods or altering crop types.
- (6) The enactment of the Agricultural* Foreign Investment Disclosure Act of 1978 by the U. S. Congress established a uniform and continuous reporting mechanism to better identify and monitor foreign investments within Maryland.

* This Act and a section by section discussion of it are included in the Appendix.

APPENDICES

House Joint Resolution 72

A House Joint Resolution concerning

Foreign Investments in Maryland Farmland

FOR the purpose of urging the Governor to direct the Department of State Planning, the Department of Assessments and Taxation, and the Department of Agriculture to study and report to the General Assembly on the extent of foreign ownership of Maryland farmland.

It appears that foreign firms are buying up large parcels of prime agricultural land in the United States. There is some indication that Maryland is not immune from this recent trend of foreign investment.

Maryland farmland is a limited asset, necessary for our continued survival.

Although there are no laws in Maryland restricting the right of foreign ownership, and foreign investors are free to purchase property in the State, the Legislature has the responsibility to keep an inventory of farmland which has passed into the hands of foreign investors.

Absentee foreign landlords are not interested in better roads and schools because this would mean higher taxes and would bring less return on their investments. Foreign investments in Maryland farmland may also have an effect on farm prices, and may have other domestic and international implications which are not apparent at this time. If foreign investors buy a substantial proportion of American farmland, what is to keep them from sending shipments of foodstuffs directly back to their own country and neglecting the needs of local inhabitants. We need to know the extent of foreign investment in farmland in Maryland and must have some concrete figures on just how much land has been bought with foreign dollars; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That Acting Governor Lee direct the Department of State Planning, the Department of Assessments and Taxation, and the Department of Agriculture to study and report to the General Assembly no later than the 1979 Session of the General Assembly of the following:

1. The extent of purchases of Maryland farmland by foreign firms and individuals, and
2. The future effect on agricultural land and foodstuff prices of these foreign purchases; and be it further

RESOLVED, That copies of this Resolution be sent to Acting Governor Lee and the Secretaries of the Department of State Planning, Department of Assessments and Taxation, and the Secretary of Agriculture of Maryland.

Approved May 29, 1978.

An Act

To require foreign persons who acquire, transfer, or hold interests in agricultural land to report such transactions and holdings to the Secretary of Agriculture and to direct the Secretary to analyze information contained in such reports and determine the effects such transactions and holdings have, particularly on family farms and rural communities, and for other purposes.

Oct. 14, 1978

[S. 3384]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Agricultural Foreign Investment Disclosure Act of 1978".

Agricultural
Foreign
Investment
Disclosure Act
of 1978.

7 USC 3501 note.

REPORTING REQUIREMENTS

SEC. 2. (a) Any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land shall submit a report to the Secretary of Agriculture not later than 90 days after the date of such acquisition or transfer. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain—

Land interests,
acquisitions or
transfers.
7 USC 3501.

- (1) the legal name and the address of such foreign person;
- (2) in any case in which such foreign person is an individual, the citizenship of such foreign person;
- (3) in any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;
- (4) the type of interest in agricultural land which such foreign person acquired or transferred;
- (5) the legal description and acreage of such agricultural land;
- (6) the purchase price paid for, or any other consideration given for, such interest;
- (7) in any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred and—
 - (A) in any case in which such transferee is an individual, the citizenship of such transferee; and
 - (B) in any case in which such transferee is not an individual or a government, the nature of the legal entity holding the interest, the country in which such transferee is created or organized, and the principal place of business of such transferee;
- (8) the agricultural purposes for which such foreign person intends, on the date on which such report is submitted to the Secretary, to use such agricultural land; and
- (9) such other information as the Secretary may require by regulation.

(b) Any foreign person who holds any interest, other than a security interest, in agricultural land on the day before the effective date of this section shall submit a report to the Secretary not later than 180 days after such effective date. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain—

- (1) the legal name and the address of such foreign person;
- (2) in any case in which such foreign person is an individual, the citizenship of such foreign person;
- (3) in any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;
- (4) the type of interest in agricultural land which is held by such foreign person;

- (5) the legal description and acreage of such agricultural land;
- (6) the purchase price paid for, or any other consideration given for, such interest;
- (7) the agricultural purposes for which such foreign person—
 - (A) is using such agricultural land on the date on which such report is submitted to the Secretary; and
 - (B) intends, as of such date, to use such agricultural land;
 and
- (8) such other information as the Secretary may require by regulation.

(c) Any person who holds or acquires (on or after the effective date of this section) any interest, other than a security interest, in agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person shall submit a report to the Secretary not later than 90 days after the date on which such person becomes a foreign person. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain the information required by subsection (b) of this section. This subsection shall not apply with respect to any person who is required to submit a report with respect to such land under subsection (b) of this section.

(d) Any foreign person who holds or acquires (on or after the effective date of this section) any interest, other than a security interest, in land at a time when such land is not agricultural land and such land subsequently becomes agricultural land shall submit a report to the Secretary not later than 90 days after the date on which such land becomes agricultural land. Such report shall be submitted in such form and in accordance with such procedures as the Secretary may require and shall contain the information required by subsection (b) of this section. This subsection shall not apply with respect to any person who is required to submit a report with respect to such land under subsection (b) of this section.

(e) With respect to any foreign person, other than an individual or a government, who is required by subsection (a), (b), (c), or (d) of this section to submit a report, the Secretary may, in addition, require such foreign person to submit to the Secretary a report containing—

(A) the legal name and the address of each person who holds any interest in such foreign person;

(B) in any case in which the holder of such interest is an individual, the citizenship of such holder; and

(C) in any case in which the holder of such interest is not an individual or a government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(f) With respect to any person, other than an individual or a government, whose legal name is contained in any report submitted under subsection (e) of the section, the Secretary may require such person to submit to the Secretary a report containing—

(A) the legal name and the address of any person who holds any interest in the person submitting the report under this subsection;

(B) in any case in which the holder of such interest is an individual, the citizenship of such holder; and

(C) in any case in which the holder of such interest is not an individual or a government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

CIVIL PENALTY

SEC. 3. (a) If the Secretary determines that a person—

(1) has failed to submit a report in accordance with the provisions of section 2, or

(2) has knowingly submitted a report under section 2—

(A) which does not contain all the information required to be in such report, or

(B) which contains information that is misleading or false,

7 USC 3502.

such person shall be subject to a civil penalty imposed by the Secretary. The amount of any such civil penalty shall be determined in accordance with the provisions of subsection (b) of this section. Any such civil penalty shall be recoverable in a civil action brought by the Attorney General of the United States in an appropriate district court of the United States.

(b) The amount of any civil penalty imposed by the Secretary under subsection (a) of this section shall be such amount as the Secretary determines to be appropriate to carry out the purposes of this Act, except that such amount shall not exceed 25 percent of the fair market value, on the date of the assessment of such penalty, of the interest in agricultural land with respect to which such violation occurred.

INVESTIGATIVE ACTIONS

SEC. 4. The Secretary may take such actions as the Secretary considers necessary to monitor compliance with the provisions of this Act and to determine whether the information contained in any report submitted under section 2 accurately and fully reveals the ownership interest of all foreign persons in any foreign person who is required to submit a report under such section. 7 USC 3503.

REPORTS TO CONGRESS AND THE PRESIDENT

SEC. 5. (a) In accordance with the schedule set forth in subsection (b) of this section, the Secretary shall— 7 USC 3504.

(1) with respect to each period set forth in such subsection, analyze information obtained by the Secretary under section 2 and determine the effects of foreign persons acquiring, transferring, and holding agricultural land, particularly the effects of such acquisitions, transfers, and holdings on family farms and rural communities; and

(2) transmit to the President and each House of the Congress a report on the Secretary's findings and conclusions regarding—

(A) each analysis and determination made under paragraph (1); and

(B) the effectiveness and efficiency of the reporting requirements contained in section 2 in providing the information required to be reported by such section.

(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination transmitted, pursuant to subsection (a) of this section—

(1) with respect to information obtained by the Secretary under section 2 during the 6-month period following the effective date of section 2, within 9 months after such effective date;

(2) with respect to information obtained by the Secretary under section 2 during the 12-month period following the effective date of section 2, within 15 months after such effective date; and

(3) with respect to each calendar year following the 12-month period referred to in paragraph (2), within 90 days after the end of such calendar year.

REPORTS TO THE STATES

SEC. 6. Not later than 30 days after the end of each 6-month period beginning after the effective date of section 2, the Secretary shall transmit to each State department of agriculture, or such other appropriate State agency as the Secretary considers advisable, a copy of each report which was submitted to the Secretary under section 2 during such 6-month period and which involved agricultural land located in such State. 7 USC 3505.

PUBLIC INSPECTION

SEC. 7. Any report submitted to the Secretary under section 2 shall be available for public inspection at the Department of Agriculture located in the District of Columbia not later than 10 days after the date on which such report is received by the Secretary. 7 USC 3506.

REGULATIONS

SEC. 8. Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe regulations for purposes of carrying out the provisions of this Act. 7 USC 3507.

DEFINITIONS

SEC. 9. For purposes of this Act— 7 USC 3508.

(1) the term "agricultural land" means any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the Secretary under regulations to be prescribed by the Secretary;

(2) the term "foreign government" means any government other than the Federal Government or any government of a State or a political subdivision of a State;

(3) the term "foreign person" means—

(A) any individual—

(i) who is not a citizen or national of the United States;

(ii) who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) who is not lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act;

(B) any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(C) any person, other than an individual or a government—

(i) which is created or organized under the laws of any State; and

(ii) in which, as determined by the Secretary under regulations which the Secretary shall prescribe, a significant interest or substantial control is directly or indirectly held—

(I) by any individual referred to in subparagraph (A);

(II) by any person referred to in subparagraph (B);

(III) by any foreign government; or

(IV) by any combination of such individuals, persons, or governments; and

(D) any foreign government;

(4) the term "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity;

(5) the term "Secretary" means the Secretary of Agriculture; and

(6) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

EFFECTIVE DATES

SEC. 10. (a) Except as provided in subsection (b) of this section, this Act shall become effective on the date of the enactment of this Act. 7 USC 3501 note.

(b) Section 2 shall become effective on the date on which regulations prescribed by the Secretary under section 8 become effective.

Approved October 14, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1570 accompanying H.R. 13356 (Comm. on Agriculture).

SENATE REPORT No. 95-1072 (Comm. on Agriculture, Nutrition, and Forestry).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Aug. 11, considered and passed Senate.

Sept. 26, H.R. 13356 considered and passed House; passage vacated and S. 3384, amended, passed in lieu.

Oct. 2, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 42:

Oct. 14, Presidential statement.

SECTION-BY-SECTION ANALYSIS OF PUBLIC LAW 95-460, THE AGRICULTURAL FOREIGN INVESTMENT DIS- CLOSURE ACT OF 1978

Section 1—Short title

Section 1 provides that the act may be cited as the "Agricultural Foreign Investment Disclosure Act of 1978."

Section 2—Reporting requirements

Section 2 establishes several reporting requirements with respect to the ownership and transfer of U.S. agricultural land by foreign persons. The term "foreign person" as used in the act includes individuals, governments, and legally created entities (both foreign entities and domestic entities in which a significant interest or substantial control is directly or indirectly held by foreigners).

All legal and beneficial interests in agricultural land—including contracts for sale or similar arrangements and leaseholds of long duration or that have other characteristics that effectively convey an ownership interest in land—would be subject to the reporting requirements. However, security interests, contingent interests, easements, and the like would be excluded from the requirements. "Agricultural land" includes land generally used for agricultural, forestry, or timber production purposes—as well as land actually in use for any of these purposes—and land associated with the raising of livestock or poultry.

Section 2 specifically provides that foreign persons *who acquire or transfer interests* (other than security interests) in agricultural land in the United States must file reports with the Secretary of Agriculture within 90 days after the acquisition or transfer. Each such report shall contain—

- (1) the legal name and address of the foreign person;
- (2) if the foreign person is an individual, the person's citizenship, or, if the foreign person is not an individual or government, the type of legal entity the person is, the nation in which the person was created or organized, and the person's principal place of business;
- (3) the type of interest in the land that is being acquired or transferred;
- (4) the legal description and acreage of the land;
- (5) the purchase price paid, or any other consideration given, for the interest;
- (6) if the foreign person is the transferor of the interest, the legal name, address, and citizenship (or type of legal entity, nation of creation or organization, and principal place of business) of the transferee;
- (7) if the foreign person is the recipient of the interest, the agricultural purposes for which the foreign person intends to use the land; and
- (8) other information that the Secretary of Agriculture may, by regulation, require—such as information on nonagricultural purposes for which the foreign person intends to use the land.

Section 2 also provides that foreign persons *who hold interests* (other than security interests) in agricultural land in the United States on the day before the effective date of section 2 must file reports with the Secretary of Agriculture within 180 days after the effective date.

Each such report shall contain—

- (1) the legal name and address of the foreign person;
- (2) if the foreign person is an individual, the person's citizenship, or, if the foreign person is not an individual or government, the type of legal entity the person is, the nation in which the person was created or organized, and the person's principal place of business;
- (3) the type of interest in the land that is held by the foreign person;

- (4) the legal description and acreage of the land;
- (5) the purchase price paid, or any other consideration given, for the interest;
- (6) the agricultural purposes for which the foreign person, as of the date the report is filed, is using the land and intends in the future to use the land; and
- (7) other information that the Secretary of Agriculture may, by regulation, require—such as the date that the foreign person acquired the interest in the land, or information on nonagricultural purposes for which the foreign person is using, and intends to use, the land.

Section 2 requires—

- (1) persons who become foreign persons subsequent to acquisition of an interest (other than a security interest) in agricultural land in the United States to file reports to the Secretary of Agriculture not later than 90 days after the person becomes a foreign person; and
- (2) foreign persons who hold or acquire interests (other than security interests) in nonagricultural land that subsequently becomes agricultural land to file reports to the Secretary of Agriculture not later than 90 days after the land becomes agricultural land.

These reports are to include the same information required to be submitted by persons who hold interests in agricultural land in the United States on the day before the effective date of section 2.

Section 2 provides that the Secretary of Agriculture may impose certain additional reporting requirements on foreign persons, other than individuals or governments, required to report. Specifically, the Secretary may require the foreign person to submit a report containing the legal names and addresses of persons who hold interests in the person and, if the holder of the interest is an individual, the holder's citizenship, or, if the holder is not an individual or government, the type of legal entity the holder is, the nation in which the holder was created or organized, and the holder's principal place of business. Further, the Secretary is given authority to require the holders of interests in foreign persons whose names are listed in reports themselves to submit reports listing the legal names, addresses, and citizenship (or legal nature, place of creation or organization, and principal place of business) of persons holding interests in them.

It is expected that the Secretary of Agriculture will seek the cooperation and assistance of State and county governments and make maximum use of Department of Agriculture field offices (including State and county ASCS offices) in obtaining information from foreign and other persons under the act.

Section 3—Civil penalty

Section 3 provides that if a person fails to submit a report required under section 2 of the act, or knowingly (or with reason to know) submits such a report that is incomplete, misleading, or false, the person will be subject to a civil penalty imposed by the Secretary of Agriculture. The civil penalty will be recoverable in a civil action brought by the Attorney General of the United States unless the person pays the penalty upon demand by the Secretary.

Section 3 provides that each civil penalty shall be set at an amount that the Secretary determines appropriate to carry out the purposes of the act, but not to exceed 25 percent of the fair market value of the interest in the agricultural land with respect to which the violation occurred.

Section 4—Investigative actions

Section 4 gives the Secretary of Agriculture authority to take such actions as he considers necessary to monitor compliance with the provisions of the act and to determine whether the information contained in any report submitted under section 2 of the act accurately

and fully reveals the ownership interest of all foreign persons in any foreign person required to submit a report.

Section 5—Reports to Congress and the President

Section 5 requires the Secretary of Agriculture to analyze information obtained under section 2 of the act and to determine the effects of foreign investment in U.S. farmland, particularly the effects on family farms and rural communities. The information should also be analyzed to determine the effect of foreign investment on rural land markets, and to determine trends with respect to ownership or control of agricultural land by foreign persons. The Secretary is required also to submit to the President and each House of Congress reports containing (1) his findings and conclusions regarding his analyses of information and determinations, and (2) his findings and conclusions regarding the effectiveness and efficiency of the reporting requirements of section 2 in providing the information required.

Section 5 establishes a timetable for the Secretary to follow in submitting the reports of his findings and conclusions as follows:

(1) With respect to the information obtained in the first 6-month period after the effective date of section 2, the report is due within 9 months after that effective date. The portion of this initial report covering landholdings by foreigners as of the effective date of the act will serve as a benchmark against which future findings can be measured.

(2) With respect to the information obtained during the first 12-month period after the effective date of section 2, the report is due within 15 months after that effective date.

(3) With respect to the information obtained during each calendar year following the first 12-month period after the effective date of section 2, the reports are due within 90 days after the end of the calendar year.

Copies of the reports should be sent to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Section 6—Reports to the States

Section 6 requires the Secretary of Agriculture at the end of each 6-month period after the effective date of section 2 of the act to transmit (within 30 days) to the appropriate State agency in each State a copy of each report received by the Secretary under section 2 during the previous 6 months that involves agricultural land located in the State.

Section 7—Public inspection

Section 7 provides that each report submitted to the Secretary of Agriculture under section 2 of the act shall be available for public inspection at the Department of Agriculture in the District of Columbia not later than 10 days after the report is received. This provision shall not derogate from any right to access to records of the U.S. Government that a person may have under the Freedom of Information Act, and the reports submitted under section 2 shall be available as a matter of course under that act.

Section 8—Regulations

Section 8 requires the Secretary of Agriculture, not later than 90 days after the date of enactment of the act, to prescribe final regulations necessary to carry out the provisions of the act.

Section 9—Definitions

Section 9 defines the terms "agricultural land," "foreign government," "foreign person," "person," "Secretary," and "State" for the purposes of the act.

Section 10—Effective dates

Section 10 provides that the act—except for section 2—shall become effective on the date of its enactment (October 14, 1978). Section 2 will become effective on the date (not later than 90 days after the date of enactment of the act) on which regulations required under section 8 become effective.

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.

- 781.1 Applicability
- 781.2 Definitions
- 781.3 Reporting Requirements
- 781.4 Penalty Determinations

Authority: Sec. 1-10, 92 Stat. 1266 (7 U.S.C. 3501).

§ 781.1 Applicability.

The purpose of these rules and regulations is to set forth the requirements of ASCS designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The rules specify when a foreign person who acquires, disposes of or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the rules establish a system for the collection of information by ASCS pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by ESCS concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present.

The following terms shall have the following meanings:

(a) *AFIDA*. Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural land*. Land in the United States which is currently used for, or if idle and its last use within the past five years was for, agricultural, forestry, or timber production, except land not exceeding one acre in the aggregate from which the agricultural, forestry or timber products are less than \$1,000 in annual gross sales value and such products are produced for the personal or household use of the person or persons holding an interest in such land.

(c) *Any interest*. All interests acquired, transferred or held in agricultural lands by a foreign person including leaseholds of ten years or more and any noncontingent future interest which will become possessory upon the termination of the present possessory estate.

(d) *County*. A political subdivision of a State identified as a county or parish. In Alaska, an area so designed by the State ASC Committee.

(e) *Foreign government*. Any government other than the United States Government, the government of a State, or a political subdivision of a State.

(f) *Foreign legal entity*. (1) Any legal entity created under the laws of a foreign government shall be deemed to be a foreign legal entity regardless of the interest or control of such legal entity held by foreign persons.

(2) Any legal entity created under the laws of the United States, of any State thereof shall be deemed to be a foreign legal entity if a significant interest or substantial control of the stock or membership of such legal entity is held by foreign persons, foreign governments, or legal entities created under the laws of a foreign government.

(g) *Foreign person*. The term "foreign person" means:

- (i) Any individual;
- (ii) Who is not a citizen or national of the United States;
- (iii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or
- (iii) Who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any person, other than an individual or a government;

(i) Which is created or organized under the laws of any State; and

(ii) In which, a significant interest or substantial control is directly or indirectly held;

(A) by any individual referred to in subparagraph (1);

(B) by any person referred to in subparagraph (2);

(C) by any combination of such individuals, persons or governments; and

(4) Any foreign government.

(h) *Person*. The term person includes any individual, corporation, company association, foreign partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary*. The term means the Secretary of Agriculture.

(j) *Security interest*. A mortgage or other debt securing instrument which shall be exempt from reporting.

(k) *State*. The term means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

(1) *Significant interest and substantial control*. A foreign person shall be deemed to hold substantial interest and significant control in a legal entity for the purposes of reporting if such foreign person holds five percent or more interest in any legal entity which holds, directly or indirectly any interest in United States agricultural land.

§ 781.3 Reporting Requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS county office in the county where the land with respect to which such report must be filed is located or where the ASCS county office administering programs carried out on such land is located.

(b) Any foreign person holding any interest, other than security interest, in U.S. agricultural land on the day before February 2, 1979, must submit, on or before August 6, 1979, a report Form ASCS-153 containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest in agricultural land which is held by such foreign person;

(5) The legal description and acreage of such agricultural land;

(5) The purchase price paid for, or any other consideration given for such interest;

(7) The agricultural purposes for which such foreign person:

(i) Is using such agricultural land on the date on which such report is submitted; and

(ii) Intends, as of such date, to use such agricultural land.

(8) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS-153 form for the foreign person; and

(9) How the tract of land was acquired or transferred, the relationship of the foreign owner to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement.

(c) Any foreign person acquiring or transferring any interest, other than a security interest in U.S. agricultural land on and after February 2, 1979, must submit, not later than 90 days after the date of such acquisition or transfer, a report Form ASCS-153 containing the following information:



PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

Sec.

- 781.1 Applicability
- 781.2 Definitions
- 781.3 Reporting Requirements
- 781.4 Penalty Determinations

Authority: Sec. 1-10, 92 Stat. 1266 (7 U.S.C. 3501).

§ 781.1 Applicability.

The purpose of these rules and regulations is to set forth the requirements of ASCS designed to implement the Agricultural Foreign Investment Disclosure Act of 1978. The rules specify when a foreign person who acquires, disposes of or holds an interest in United States agricultural land shall disclose such transactions and holdings to the Secretary of Agriculture. In particular, the rules establish a system for the collection of information by ASCS pertaining to foreign investment in United States agricultural land. The information collected will be utilized in the preparation of periodic reports to Congress and the President by ESCS concerning the effect of such holdings upon family farms and rural communities.

§ 781.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, and words used in the present tense include the future as well as the present.

The following terms shall have the following meanings:

(a) *AFIDA*. Agricultural Foreign Investment Disclosure Act of 1978.

(b) *Agricultural land*. Land in the United States which is currently used for, or if idle and its last use within the past five years was for, agricultural, forestry, or timber production, except land not exceeding one acre in the aggregate from which the agricultural, forestry or timber products are less than \$1,000 in annual gross sales value and such products are produced for the personal or household use of the person or persons holding an interest in such land.

(c) *Any interest*. All interests acquired, transferred or held in agricultural lands by a foreign person including leaseholds of ten years or more and any noncontingent future interest which will become possessory upon the termination of the present possessory estate.

(d) *County*. A political subdivision of a State identified as a county or parish. In Alaska, an area so designed by the State ASC Committee.

(e) *Foreign government*. Any government other than the United States Government, the government of a State, or a political subdivision of a State.

(f) *Foreign legal entity*. (1) Any legal entity created under the laws of a foreign government shall be deemed to be a foreign legal entity regardless of the interest or control of such legal entity held by foreign persons.

(2) Any legal entity created under the laws of the United States, of any State thereof shall be deemed to be a foreign legal entity if a significant interest or substantial control of the stock or membership of such legal entity is held by foreign persons, foreign governments, or legal entities created under the laws of a foreign government.

(g) *Foreign person*. The term "foreign person" means:

(1) Any individual;

(i) Who is not a citizen or national of the United States;

(ii) Who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or

(iii) Who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under the Immigration and Nationality Act;

(2) Any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside of all the States;

(3) Any person, other than an individual or a government;

(i) Which is created or organized under the laws of any State; and

(ii) In which, a significant interest or substantial control is directly or indirectly held;

(A) by any individual referred to in subparagraph (1);

(B) by any person referred to in subparagraph (2);

(C) by any combination of such individuals, persons or governments; and

(4) Any foreign government.

(h) *Person*. The term person includes any individual, corporation, company association, foreign partnership, society, joint stock company, trust, estate, or any other legal entity.

(i) *Secretary*. The term means the Secretary of Agriculture.

(j) *Security interest*. A mortgage or other debt securing instrument which shall be exempt from reporting.

(k) *State*. The term means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.

(l) *Significant interest and substantial control*. A foreign person shall be deemed to hold substantial interest and significant control in a legal entity for the purposes of reporting if such foreign person holds five percent or more interest in any legal entity which holds, directly or indirectly any interest in United States agricultural land.

§ 781.3 Reporting Requirements.

(a) All reports required to be filed pursuant to this part shall be filed with the ASCS county office in the county where the land with respect to which such report must be filed is located or where the ASCS county office administering programs carried out on such land is located.

(b) Any foreign person holding any interest, other than security interest, in U.S. agricultural land on the day before February 2, 1979, must submit, on or before August 6, 1979, a report Form ASCS-153 containing the following information:

(1) The legal name and the address of such foreign person;

(2) In any case in which such foreign person is an individual, the citizenship of such foreign person;

(3) In any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;

(4) The type of interest in agricultural land which is held by such foreign person;

(5) The legal description and acreage of such agricultural land;

(6) The purchase price paid for, or any other consideration given for such interest;

(7) The agricultural purposes for which such foreign person:

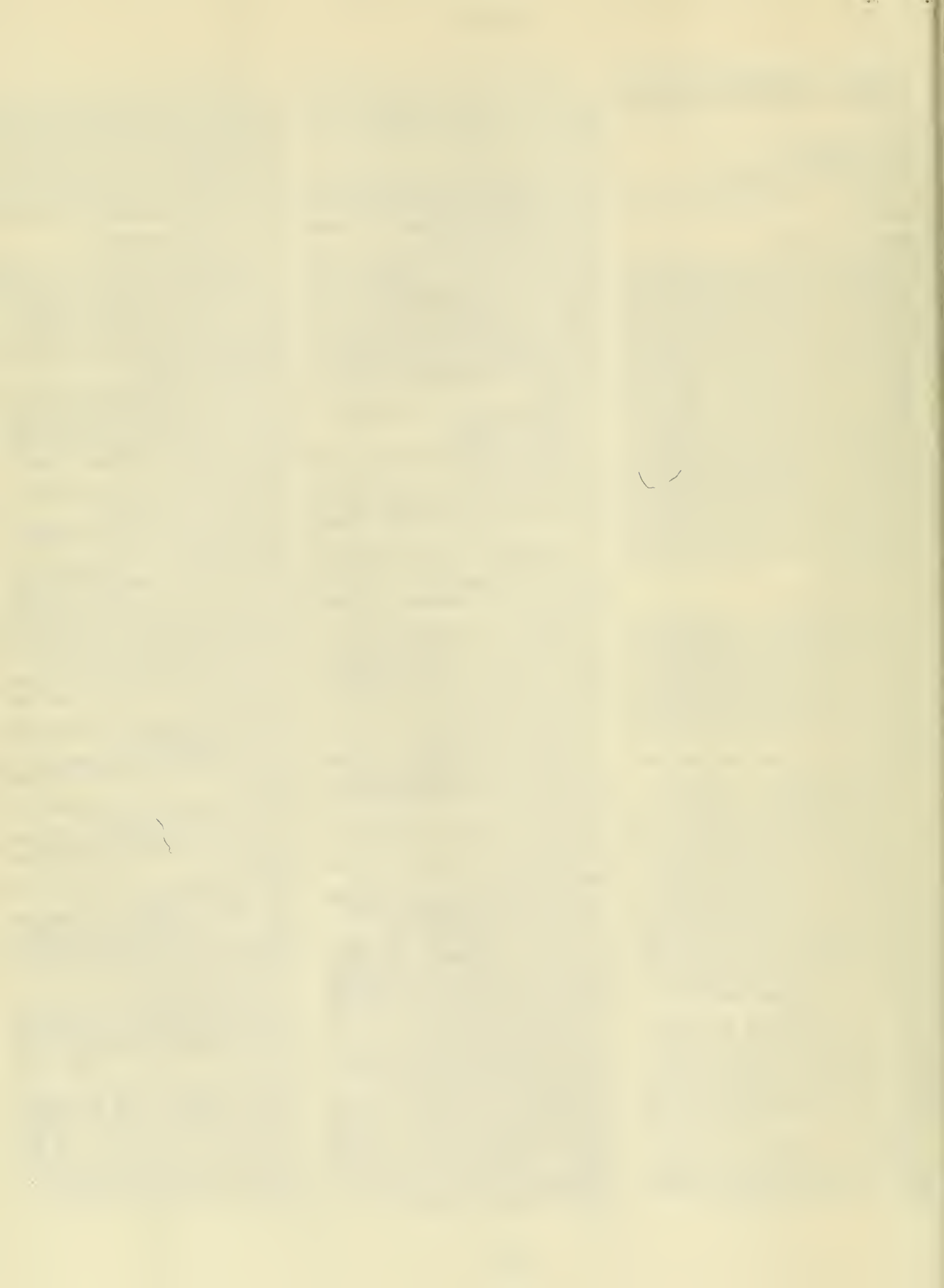
(i) Is using such agricultural land on the date on which such report is submitted; and

(ii) Intends, as of such date, to use such agricultural land.

(8) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS-153 form for the foreign person; and

(9) How the tract of land was acquired or transferred, the relationship of the foreign owner to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement.

(c) Any foreign person acquiring or transferring any interest, other than a security interest in U.S. agricultural land on and after February 2, 1979, must submit, not later than 90 days after the date of such acquisition or transfer, a report Form ASCS-153 containing the following information:



- (1) The legal name and the address of such foreign person;
- (2) In any case in which such foreign person is an individual, the citizenship of such foreign person;
- (3) In any case in which such foreign person is not an individual or a government, the nature of the legal entity holding the interest, the country in which such foreign person is created or organized, and the principal place of business of such foreign person;
- (4) The type of interest held by a foreign person who acquired or transferred an interest in agricultural land;
- (5) The legal description and acreage of such agricultural land;
- (6) The purchase price paid for, or any other consideration given for, such interest;
- (7) In any case in which such foreign person transfers such interest, the legal name and the address of the person to whom such interest is transferred; and
 - (i) In any case in which such transferee is an individual, the citizenship of such transferee; and
 - (ii) In any case in which such transferee is not an individual, or a government, the nature of the legal entity holding the interest, the country in which such transferee is created or organized, and the principal place of business;
- (8) The agricultural purposes for which such foreign person intends, on the date on which such report is submitted, to use such agricultural land;
- (9) When applicable, the name, address and relationship of the representative of the foreign person who is completing the ASCS-153 form for the foreign person; and
- (10) How the tract of land was acquired or transferred, the relationship of the foreign owner to the previous owner, producer, manager, tenant or sharecropper, and the rental agreement.
- (d) Any foreign person, except a person required to submit a report under paragraph (b) of this section, who, on or after February 2, 1979 (the date of publication of these regulations) holds or acquires any interest, other than a security interest, in United States agricultural land at a time when such person is not a foreign person and who subsequently becomes a foreign person, must submit, not later than 90 days after the date on which such person becomes a foreign person, a report Form ASCS-153 containing the information required to be submitted under paragraph (b) of this section.
- (e) Any foreign person, except a person required to submit a report under paragraph (b) of this section, who, on or after February 2, 1979, holds or acquires any interest, other than a security interest, in United

States agricultural land at a time when such land is not agricultural land and such land subsequently becomes agricultural land must submit, not later than 90 days after the date on which such land becomes agricultural, a report Form ASCS-153 containing the information required to be submitted under paragraph (b) of this section.

(f)(1) Any foreign person, other than an individual or a government, required to submit a report under paragraphs (b), (c), (d), or (e) of this section, must submit a report containing the following information:

(i) The legal name and the address of each foreign individual or government holding any interest in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or a government, the nature of the foreign legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(2) In addition, any such foreign person required to submit the foregoing information may also be required, upon request, to submit a report containing:

(i) The legal name and the address of each individual or government whose legal name and address did not appear on the initial report, if such individual or government holds any interest in such foreign person;

(ii) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(iii) In any case in which the holder of such interest is not an individual or government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

(g) Any foreign person, other than an individual or a government, whose legal name is contained on any report submitted in satisfaction of subsection (f) or this subsection may also be required, upon request, to submit a report containing the following information:

(1) The legal name and the address of any person who holds any interest in the person submitting the report under this subsection;

(2) In any case in which the holder of such interest is an individual, the citizenship of such holder; and

(3) In any case in which the holder of such interest is not an individual or a government, the nature of the legal entity holding the interest, the country in which such holder is created or organized, and the principal place of business of such holder.

§ 781.4 Penalty determinations.

(a) Violation of the reporting obligation will consist of:

(1) Failure to submit any report required to be submitted pursuant to Section 781.3, or

(2) Knowing failure to

(i) Submit a report which does not contain all the information required to be in such report, or

(ii) Submit a report which contains misleading or false information.

(b) Determinations of violation of such reporting obligations will be made on the basis of evidence submitted to a Board periodically appointed by the Secretary to make such determinations. Upon a determination of violation the Board will also make a preliminary determination of the fair market value of the interest in the agricultural land with respect to which such violation has occurred. Following each such determination of a reporting violation, the Board will transmit to the Secretary a recommendation as to the amount of the civil fine for failure to comply with the reporting obligation. After consideration by the Secretary of the recommendation transmitted by the Board, the foreign person failing to comply with the reporting obligation shall be subject to a civil fine imposed by the Secretary, the amount of which shall not exceed 25 percent of the fair market value of the interest in the agricultural land with respect to which such violation has occurred, redetermined by the Board as of the date of the assessment of such penalty.

This regulation has been determined significant under the USDA criteria implementing Executive Order 12044. It is hereby certified that an approved Final Impact Statement has been prepared in accordance with Executive Order 12044 and is available by contacting the Office of the Director of Economics, Policy Analysis and Budget, Room 102, Administration Building, USDA, Washington, D.C. 20250.

Signed at Washington, D.C., on February 2, 1979.

BOB BERGLAND,
Secretary of Agriculture.

(FR Doc. 79-4136 Filed 2-2-79; 8:45 am)

UNIV. OF MD. COLLEGE PARK



3 1430 00301707 8

HECKMAN
BINDERY INC.



MAR 84



N. MANCHESTER,
INDIANA 46962

